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Foreign Lawyer “Recognition”



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Panel: Trends in International Practice-Testing
& Regulation of U.S. Lawyers
National Conference of Bar Examiners
April 24, 2009, Baltimore

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Summary of Talk



- Introduction
 - Foreign lawyer “recognition” in the U.S.
 - “Recognition” by other U.S. professions
 - Foreign lawyer recognition outside the U.S.
 - “Recognition” provisions in global agreements
 - Reasons why bar examiners might want to consider foreign lawyer admission issues
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March-09 NCBE Member Survey Results

First – thanks so much for responding!

- **25 (of 45)** U.S. jurisdictions allow some foreign lawyers to sit for their bar exam
- **8 (of 45)** allow some kind of admission by motion for foreign lawyers
- **65%** of responders said admission applications from foreign lawyers are on the rise
- **38 states** are willing to consider foreign lawyer admission (& said what info would be helpful)

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Why NCBE Members Were Surveyed

- The ABA currently has:
 - a Model Foreign Legal Consultant Rule
 - a Model Rule for Temporary Practice by Foreign Lawyers
(similar to ABA Model Rule 5.5)
- The ABA currently is considering:
 - whether to recommend a foreign in-house counsel registration rule (*Cf.* AZ, CT, DE, VA, WA, WI)
- The ABA Section of Legal Ed's new International Committee wanted to know if there is useful work it could recommend *re* foreign lawyer admission
- The subcommittee that surveyed you will report to the Committee, which reports to the ABA Section Council

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Info that some NCBE Members wanted:

- Which foreign law schools are regularly accepted by other states?
- Is the foreign law school's coursework equivalent to that of an ABA accredited law school?
- Is there one central licensing and one central disciplinary authority in a particular country?
- How can one verify licensure in a particular country?
- Foreign education specifics: courses taken; whether it was classroom or self study, # of classroom hours
- Impact of this on non ABA-accredited U.S. graduates

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2007 Conference of Chief Justices Resolutions

Resolution 8: NOW, THEREFORE, BE IT RESOLVED that the [CCJ] *urges the American Bar Association Section on Legal Education and Admission to the Bar to consider* developing and implementing *a program to certify the quality of the legal education* offered by universities in other common-law countries.

Resolution 7: NOW, THEREFORE, BE IT RESOLVED that the [CCJ] *urges each state supreme court* to consider permitting individuals *who have graduated from an Australian University and have been admitted to practice in Australia*, and who meet the state requirements regarding experience, character, and fitness, *to sit for the bar examination* and if they pass that examination, to be admitted to the practice of law in the state.

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Why Clients May Want Foreign Lawyers

U.S. Trade in Goods & Services

2008	
Exports	\$1,835,785,000,000 [\$1.8 trillion]
Imports	\$2,516,915,000,000 [\$2.5 trillion]

U.S. Cross Border Trade in Legal Services [Modes 1,2, 4]

2007 (the latest data)	
Exports	\$6,424,000,000 [\$6.4 billion]
Imports	\$1,561,000,000 [\$1.6 billion]

2007: Foreign-owned assets in the U.S.	2007: US-owned assets abroad
\$20 trillion	\$17.6 trillion

Legal Services Trade by Affiliates [Mode 3]

To Foreign Persons by U.S. Firms' Foreign Offices (2006)	To US persons by Foreign Firms' U.S. offices (2004)
\$2.7 billion	\$28 million

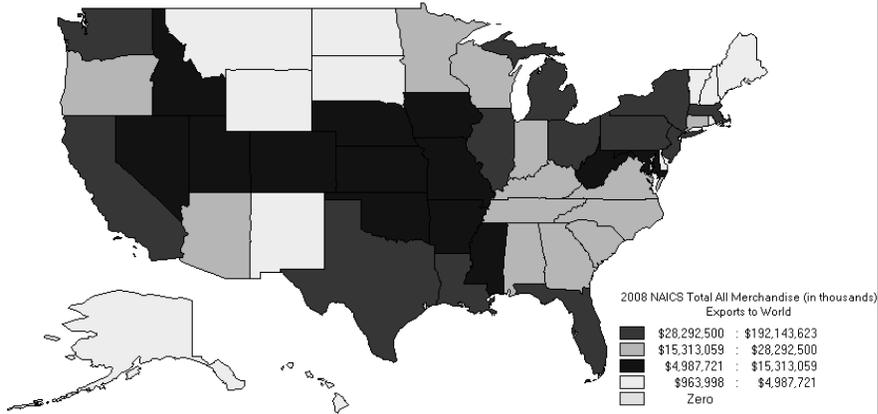
Reasons for Foreign Lawyers #2

2000 U.S. Census - Foreign Born Residents

State and Rank	Number of FB Residents	% increase since 1990	State Rank in % increase
California (1st)	8.9 Million	37.2%	37 th
Missouri (27th)	151,000	80.8%	26 th
Wyoming (51st)	11,205	46.5%	35 th
Entire U.S.	31.1 million	57.4%	---

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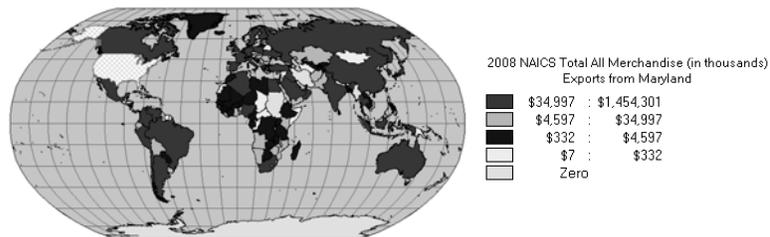
Pop Quiz: To which countries does your state export?



Answer: Check the conference materials or (the state exports link later)

Texas was #1 in 2008 at **\$192 billion**; Hawaii was last but still had **\$964 million**

2008 Maryland Exports: \$11.37 Billion



numbers are in thousands (\$ USD)

Partner	2004	2005	2006	2007	2008
World Total	5,756,815	7,138,361	7,600,472	8,948,637	11,378,740
Canada	1,098,377	1,344,950	1,494,197	1,452,354	1,454,301
China	225,169	284,905	307,633	446,314	569,634
Belgium	205,689	384,613	335,279	360,993	523,682
Netherlands	165,296	211,886	355,161	364,848	516,099
Germany	168,665	295,516	325,047	422,046	496,795
Egypt	381,665	780,612	809,910	712,954	486,673
United Kingdom	323,832	350,008	444,781	469,383	461,941
Saudi Arabia	88,883	126,056	159,329	182,700	440,413

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What Do Other U.S. Professions Do?

- The U.S. Dept. of Education has a website on professional qualification recognition

<http://www.ed.gov/about/offices/list/ous/international/usnei/us/profrecog.doc>

- My ***preliminary*** analysis of this website data shows:
 - 1 profession has a special exam for foreign qualified practitioners
 - 1 profession has recognition agreements with several countries
 - 11 of 25 profession groups seem to have a single group (like Canada) that reviews qualifications
 - 8 out of 25 (including law) have no nationally recognized credential evaluation service(s)
 - **Note:** One might want to separate technical review (does this university exist, is this a forgery) and substantive review ¹¹
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What Do Other Countries Do?

- **Australia (which has state-based admission):**



- has a central entity composed of regulators and educators; the LACC reviews applications from foreign lawyers
- Allows foreign lawyers to apply for the bar, but the additional requirements depend on the lawyer's training

- **Canada (which has state-based admission):**



- has a *National Committee on Accreditation* that decides what a foreign-trained lawyer must do to sit for the bar
- Proposed in a Dec. 08 consultation that it retain rules that differentiate based on where the foreign lawyer was trained

- **England and Wales:**



- use the Qualified Lawyers' Transfer Test [QLTT]
 - the # of QLTT subjects depends on the lawyer's training
 - But note: non-solicitors can do all but "reserved" tasks
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EU Lawyer Mobility

- EU Directive 77/249: any EU lawyer can go temporarily into another EU country
- EU Directive 95/8: any EU lawyer who registers can practice permanently in another EU country
- This system was forced upon EU lawyers by the Court, but most now think it works well
- The system is based on lawyers' duty of competence
- Note: Most EU countries don't do this for non-EU lawyers
- Under the ECJ's "Morgenbesser" case, EU Members must now evaluate and "recognize" the training of "unfinished products"

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Why Pay Attention to these Issues?

- Developing (and administering) foreign lawyer admission rules is hard work
- It may seem like the applicant numbers don't justify the institutional investment of time. So why bother?
 - Ask yourself... who is handling the legal work for all of this foreign investment and trade?
 - If foreign lawyers are in your state, would you rather have them regulated or unregulated?
 - If global business can't function, they may protest the system
 - The U.S. has signed several global agreements that address the topic of professional recognition

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Global “Recognition” Agreements

- The Lisbon Convention
- U.S.-Australia Free Trade Agreement (FTA)
- Other FTAs
- The APEC Legal Services Initiative
- The GATS
- Also...the Bologna Process, which now has a “global dimension”
- *See also* global antitrust and regulatory reform initiatives

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The Lisbon Convention



- The U.S. is a signatory
- It governs recognition in higher education
- The US Department of Education administers the U.S.’ Lisbon Convention obligations
- This is one reason why the DOE has a webpage on professional qualification recognition

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Lisbon Convention provisions include:

- Holders of qualifications issued in one country shall have adequate access to an *assessment of these qualifications in another country.*
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- The responsibility to demonstrate that an application does not fulfil the relevant requirements lies with the body undertaking the assessment.

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U.S.-Australia Free Trade Agreement

1. The Parties shall encourage *the relevant bodies* in their respective territories *to develop mutually acceptable standards and criteria for licensing and certification of professional services suppliers* and to provide recommendations on mutual recognition to the Joint Committee.



Who is doing this in your state?

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U.S.-Australia Free Trade Agreement

- **Requires** the establishment of a working group;
- **Requires** that this group consider:
 - (a) procedures for fostering the development of mutual recognition arrangements among their relevant professional bodies;
 - (b) the feasibility of developing model procedures for the licensing and certification of professional services suppliers; and
 - (c) other issues of mutual interest relating to the provision of professional services

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Other Trade Agreements

Office of the United States Trade Representative

The U.S. has signed a number of Free Trade Agreements (FTAs) that include “recognition” provisions, domestic regulation provisions, and contain professional services annexes

Trade Agreements

Regional	Bilateral
* FTAA	* Australia FTA
* ASEAN Initiative	* Bahrain FTA
* NAFTA	* Chile FTA
* MEFTA	* Colombia FTA
* APEC	* Israel FTA
* CAFTA-DR	* Jordan FTA
	* KORUS FTA
	* Malaysia FTA
	* Morocco FTA
	* Oman FTA
	* Panama TPA
	* Peru TPA
	* Malaysia FTA
	* Singapore FTA
	* SACU FTA
	* Bilateral Investment Treaties (BITs)
	* Trade and Investment Framework Agreements (TIFAs)



NAFTA Secretariat
Secrétariat de l'ALÉNA
Secretariado del TLCAN

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The APEC Legal Services Initiative

- In Nov. 2008, APEC voted to fund this Initiative
- This Initiative proposed:
 - the development of an electronic repository of foreign lawyer rules and regulators
 - the development of a Legal Services Framework of best practices for reducing impediments to the provision of services in foreign and international law



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The GATS



With a view to ensuring that measures relating to **qualification requirements and procedures**, technical standards and licensing requirements do not constitute unnecessary barriers to trade in services, the Council for Trade in Services shall, through appropriate bodies it may establish, develop any necessary disciplines. Such disciplines shall aim to ensure that such requirements are, *inter alia*:

- (a) based on objective and transparent criteria, such as competence and the ability to supply the service;
- (b) not more burdensome than necessary to ensure the quality of the service;
- (c) in the case of licensing procedures, not in themselves a restriction on the supply of the service.

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Recognition & the Bologna Process

- In 10 years (98-07), the Bologna Process grew from 4 EU countries to 46 European countries
- Its ten “action lines” include promoting mobility, recognition, and quality assurance
- It has dramatically changed higher education (and legal education) in Europe
- As of 2005, it has a “global dimension”
- CHEA, the U.S. DOE and others in the U.S. are paying attention to it



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Conclusion

- Foreign lawyer recognition presents difficult issues
- Global recognition agreements create pressure for action
- There are market forces requesting greater mobility
- The failure to act is a form of action and may have consequences

My advice:

- Begin grappling with these difficult issues
- Take advantage of the ABA’s interest in helping
- Be open-minded!



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To Read More About It....



Global Trade Statistics:

Main Webpage with international trade statistics,

<http://www.bea.gov/international/index.htm>

2008 Imports-Exports in Goods and Services,

http://www.bea.gov/newsreleases/international/trade/trad_time_series.xls

2007 Legal Services Imports-Exports,

http://www.bea.gov/scb/pdf/2008/10%20October/services_tables.pdf

2008 Exports by State,

<http://tse.export.gov/MapFrameset.aspx?MapPage=SEMapStateDisplay.aspx&UniqueURL=irbonbefysgelqfhna2kyg55-2008-4-7-18-3-47>

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To Read More About It....



Resources on Foreign Lawyer Recognition Provisions in the U.S.:

- Comprehensive Guide to Bar Admission Requirements, <http://www.ncbex.org/comprehensive-guide-to-bar-admissions/>
- ABA Multijurisdictional Practice Recommendations 8 and 9, <http://www.abanet.org/cpr/mjp/home.html>
- Implementation of MJP Recommendations 8 and 9, http://www.abanet.org/cpr/mjp/8_and_9_status_chart.pdf
- MJP Implementation Generally (and links to other states' foreign lawyer rules), <http://www.abanet.org/cpr/mjp/home.html>
- Conference of Chief Justices' Resolutions, <http://ccj.ncsc.dni.us/LegalEducationResols.html>
<http://ccj.ncsc.dni.us/MultijurisdictionalPracResols.html>

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To Read More About It....

Foreign Lawyer Recognition Provisions Outside the U.S.:

- **Canada National Accreditation Committee,**
<http://www.flsc.ca/en/foreignLawyers/foreignLawyers.asp>
- **Canada's MJP Rules,** <http://www.flsc.ca/en/committees/mobility.asp>
- **Canada's consultation on draft recognition rules (Due 12-08),**
http://www.flsc.ca/en/pdf/2008Consultation_paper.pdf
- **Australia Rules for Foreign Lawyers,**
<http://www.lawcouncil.asn.au/information/foreign-lawyers/admitted-australia.cfm>
- **Australia's Law Admissions Consultative Committee,**
<http://www.lawcouncil.asn.au/lacc.cfm>
- **UK Qualified Lawyers Transfer Test (QLTT),**
<http://www.sra.org.uk/solicitors/qltt.page> and
<http://www.sra.org.uk/sra/consultations/1454.article> (Nov. 2008 consultation)

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To Read More About It....

Recognition Provisions for Other U.S. Professions

- **The Lisbon Convention,**
<http://www.ed.gov/about/offices/list/ous/international/usnei/lisbonconvention.doc>
- **Recommendation on Criteria and Procedures for the Assessment on Foreign Qualifications (2001),**
http://www.coe.int/t/dg4/highereducation/Recognition/Criteria%20and%20procedures_EN.asp#TopOfPage
- **US Dept. of Ed, International Network (USNEI),**
<http://www.ed.gov/about/offices/list/ous/international/usnei/us/edlite-students.html>
<http://www.ed.gov/about/offices/list/ous/international/usnei/edlite-about.html>
- **U.S. Dep't of Education, Recognition of Foreign Qualifications,**
<http://www.ed.gov/about/offices/list/ous/international/usnei/us/profrecog.doc>

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To Read More About It....

EU Recognition Principles (for other EU Lawyers)

- **EU MJP Directives**,
http://www.ccbe.eu/index.php?id=94&id_comite=8&L=0
- **EU Morgenbesser Case**,
http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/morgenbesser_guidanc11183976940.pdf

Miscellaneous:

- **International Bar Association's 2000 Resolution on "Recognition" of Foreign Lawyers' Qualifications**,
<http://www.ibanet.org/images/downloads/Standards%20and%20Criteria%20for%20Recognition%20of%20Qualifications%20of%20Lawyers%202001.pdf>
- **ABA CEELI, Globalization, Legal Education, GATS, and Recognition**,
http://www.abanet.org/rol/publications/discussion_paper_legal_ed_globalization_2005.pdf

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To Read More About It....

Global Trade Agreements

- **Office of the US Trade Representative (USTR), Trade Agreements Page (with many links)**,
http://www.ustr.gov/Trade_Agreements/Section_Index.html
- **World Trade Organization**, <http://www.wto.org/>
- **NAFTA Secretariat**, <http://www.nafta-sec-alena.org/en/view.aspx>
- **Asia Pacific Economic Cooperation (APEC)**, <http://www.apec.org/>
- **Trans-Pacific Strategic Economic Partnership (9-08)**,
http://www.ustr.gov/assets/Document_Library/Fact_Sheets/2008/asset_upload_file660_15116.pdf
- **ABA GATS-Legal Services Webpage**,
<http://www.abanet.org/cpr/gats/home.html>
- **Terry et al, *Transnational Legal Practice*, 42 Int'l L. 833 (2008)**,
http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1265120

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To Read More About It...

The Bologna Process

- **Bologna-Benelux Secretariat Webpage (with many links)**
<http://www.ond.vlaanderen.be/hogeronderwijs/bologna/>
- **CCBE Training Committee Webpage,**
http://www.ccbe.org/index.php?id=94&id_comite=13&L=0
- **European Law Faculties Association (ELFA) Tuning Project,**
http://www.elfa-afde.org/html/activities_projects.htm
- **ELFA QUAACAS Committee,** <http://elixir.bham.ac.uk/quaacas/>
- **Prof. Lonbay's EU Recognition website,**
<http://elixir.bham.ac.uk/menu/country/default.htm>
- **Laurel Terry's Bologna Process articles:** *The Bologna Process and its Impact in Europe: Much More than Degree Changes*, 41 Vanderbilt J. Transnat'l L. 107 (2008); *The Bologna Process and its Implications for U.S. Legal Education*, 57 J. Legal Ed. 237 (2007) ³¹

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See also....

Global Regulatory Reform Initiatives

- **OECD Regulatory Reform Project,**
http://www.oecd.org/topic/0,3373,en_2649_37421_1_1_1_1_37421,00.html
- **OECD Guiding Principles for Regulatory Quality & Performance,**
<http://www.oecd.org/dataoecd/24/6/34976533.pdf>
- **OECD, Homepage: Indicators of Regulatory Conditions in Professional Services Sectors,**
http://www.oecd.org/document/24/0,3343,en_2649_34833_35858776_1_1_1_37463,00.html
- **APEC-OECD Regulatory Reform,**
http://www.oecd.org/document/25/0,3343,en_2649_34141_2397017_1_1_1_37421,00.html
- **Regulatory Reform Sec., Canada's 2007 Self-Regulated Professions Report,** pp. 39-41,
<http://www.competitionbureau.gc.ca/epic/site/cb-bc.nsf/en/02523e.html>
- **Regulatory Objectives, §1 of the 2007 U.K. Legal Services Act,**
http://www.opsi.gov.uk/acts/acts2007/ukpga_20070029_en_2#pt1-11g1 ³²

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See also...

Global Antitrust Initiatives (which address lawyer admission and monopoly issues)

- **EU DG Competition, *Professional Services Sector*,
http://ec.europa.eu/comm/competition/sectors/professional_services/overview_en.html**
- **OECD, *Competition in Professional Services*, DAF/CLP(2000)2,
<http://www.oecd.org/dataoecd/35/4/1920231.pdf>**
- **OECD, *Competitive Restrictions in Legal Professions*, DAF/COMP (2007)39,
<http://www.oecd.org/dataoecd/12/38/40080343.pdf>**
- **Competition Bureau Canada, *Self-Regulated Professions - Balancing Competition and Regulation* (Dec. 2007),
<http://www.competitionbureau.gc.ca/epic/site/cb-bc.nsf/en/02523e.html>**
- **CCBE Competition Committee,
http://www.ccbe.eu/index.php?id=94&id_comite=4&L=0**
- **US Federal Trade Commission Letters regarding the Practice of Law,
http://www.ftc.gov/opp/advocacy_subject.shtm**
- **See Laurel Terry articles and presentations:
<http://www.personal.psu.edu/faculty/l/s/lst3/presentations.htm>**

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